Petition not printed

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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1942

No. 50

HARRY PYLE, PETITIONER,

vs.

STATE OF KANSAS AND MILTON F. AMRINE, WARDEN, KANSAS STATE PENITENTIARY

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF KANSAS

PETITION FOR CERTIORARI FILED MARCH 20, 1942.

CERTIORARI GRANTED APRIL 27, 1942.

SUPREME COURT OF THE UNITED STATES

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INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., SEPT. 4, 1942.

[fol. 1] IN THE SUPREME COURT OF KANSAS

In the Matter of the Application of HARRY PYLE for the Writ of Habeas Corpus

vs.

THE STATE OF KANSAS and M. F. AMRINE, Warden, Kansas State Penitentiary

APPLICATION FOR WRIT OF HABEAS CORPUS

Comes now, your petitioner Harry Pyle and alleges that the State of Kansas and Milton F. Amrine Warden of the Kansas State Penitentiary is holding your petitioner to involuntary servitude without authority, and that the cause or pretense of cause is a mittimus or commitment issued by the District Court of Stafford County, Kansas showing your petitioner was charged with the crime of murder and robbery, all of which your petitioner alleges was issued by the trial Court without lawful jurisdiction or due process of law. Your petitioner was never lawfully tried or found guilty after the prescribed procedure of the law of the land, and that his imprisonment is null, void, and without lawful force, for the following reasons: viz:

1

The records shows that your petitioner is not guilty of murder or robbery, or any part thereof as charged in the information.

2

The records show that evidence and testimony following the petitioners trial was pertinant and definitely proved that said state of Kansas did knowingly and prejudicially introduced evidence contrary to evidence introduced in the trial of other persons charged with the same offense as your petitioner. Such testimony contended to be by the state to be competent and true.

3

Your petitioner contends that all, each and every, right, previlege immunity provided for under the constitution of the United States has been denied by want of due process of law, and that the petitioner can by record change the

verdict rendered under such evidence and testimony introduced by the State of Kansas knowing same to be perjured and repressed.

[fol. 2] 4

Your petitioner contends that he has resorted to every remedy available under Kansas law, to bring such records within such remedies of the State and that Redress has been denied as timely appeal had expired when such records and evidence was recorded.

5

Records shows that petitioner timely appeal proceed the trial within the evidence and testimony could not be had and therefore such evidence materially brings the pertinant facts under due process of law, whereas such facts for the same crime were contrary and diffirent to that of your petitioner, that he is now being deprived or redress to show that his imprisonment was procured by want of due process of law.

6

Your petitioner is not guilty of any crime as charged in the information.

Therefore: Your petitioner respectfully moves and prays that the Honorable Court will let issue upon the respondent Milton F. Amrine, Warden of the Kansas State Penitentiary, the prerogative Writ of Habeas Corpus, that your petitioner may come forth and show to the Court that your petitioner is being unlawfully immurred in the Kansas State Penitentiary so that he may be restored to his liberty.

Harry Pyle, Petitioner, In Forma Pauperis.

Witness my hand and seal this — day of ——, A. D. 194—. —— ——, Notary Public. My commission expires as a notary public on the — day of ——, A. D. 194—.

[fol. 3] IN THE SUPREME COURT OF KANSAS

[Title omitted]

AFFIDAVIT FOR WAIVER

Comes now, Harry Pyle, your petitioner of the above entitled cause and avers that it is his belief and opinion, that The District Court of Leavenworth County, Kansas is unreasonable prejudice- and biased in its reviewal of proceedings in Habeas Corpus and that the said District Court has declined, prior this application, to review.

Therefore: Your affiant alleges that he be allowed to waive the Court of Current Jurisdiction and proceed to the Supreme Court of Kansas, in the forma pauperis.

Harry Pyle, Affiant and Petitioner.

Witness my hand and seal this — day of ——, A. D. 194—. ———, Notary Public. My commission expires as a notary public on the — day of ——, A. D. 194—.

———

[fols. 4-6] IN THE SUPREME COURT OF KANSAS

[Title omitted]

AFFIDAVIT IN FORMA PAUPERIS

I, Harry Pyle being of lawful age, do upon oath, most solemnly aver that I was born of American parents at Stockton, Cedar County, State of Missouri, on the 5th day of November 1881, and that I have since the date of my birth resided in the State of Kansas and the United States of America and that I am now and always have been a citizen of the United States.

I, the said Harry Pyle do solemnly aver that I own no property, personal or real what ever, and I do not possess any funds or other resource with which to pay my attorney fees, Court Costs, Printing Costs, or any obligations ordinarily incurred by those who must resort to legal process in pursuit of justice.

Therefore, I respectfully contend that I am of that class of person by the common law, the Statute laws of the State of Kansas and of the United States, Define as a pauper, wherefore, I respectfully pray for the leave of the Court to

prosecute an application for the writ of Habeas Corpus.
Respectfully Submitted, Harry Pyle, Affiant.

Witness my hand and seal this — day of ——, A. D. 1940. —— ——, Notary Public. My commission expires as a notary public on the — day of ——, A. D. 194—.

[fol. 7] IN THE SUPREME COURT OF KANSAS

[Title omitted]

PETITIONER'S BRIEF

Comes Now, Your petitioner of the above entitled cause to the above styled Court, who respectfully represents and shows by record that he is now being deprived of any and all rights coming within the concepts of universal justice and fundamental principles of "Due Process of Law," violative of the 14th Amendment of the United States' Constitution.

Your petitioner respectfully contends that his conviction and commitment was procured through the reckless contrivance of the District Court of Stafford County, Kansas, by such methods as was foreign to the prescribed procedure of both State and the constitution of the United States.

Your petitioner respectfully contends that he was not found guilty by evidence submitted or introduced, but by such manufactured and prepared evidence and testimony introduced by the State, knowing full well that same was suborn.

Mooney v. Holohan, 294, U. S., 103; the Court said:

"The 'Due Process' clause of the 14th Amendment governs any action of a State through its Legislature, its Courts, or its Executive officers, including action through its prosecuting officers.

"A criminal conviction procured by the State prosecuting authorities solely by the use of perjured testimony, known by them to be perjured, and knowingly used by them in order to procure a conviction, is without 'Due Process of Law' and in violation of the 14th Amendment."

Your petitioner contends that he can show by pertinent records that the State did use evidence and testimony co-

erced and perjured, knowingly by the prosecuting officers, and that his guilt has never been proven beyond a reasonable doubt by evidence, but by testimony coerced by the State.

[fol. 8] EVIDENCE AND TESTIMONY

Your petitioner respectfully contends that such evidence introduced at the petitioner's trial had no bearing upon the offense, but that such evidence under pretense of the State was by adducement and inference went beyond the precepts of the Jury and had no material bearing upon the crime.

Your petitioner respectfully contends that the Stafford County Court records show that a new, separate and distinct set of facts, evidence and testimony in the trial of Merle Hudson, held to be bona fide and accepted as true by the jury verdict, testimony which was then and is now requisite in the petitioner's defense and trial record.

Mooney v. Holohan, 294 U. S. 103; the Court said:

Par. II. "It is the duty of every state to provide corrective judicial process for the relief of prisoners convicted and imprisoned for crime without 'DUE PROCESS OF LAW' and it is to be presumed that this duty has been complied with."

Your petitioner contends that this has not been complied with in his case as he has been deprived of the right to bring such records from the trial court of Stafford County of the Merle Hudson trial, wherein new evidence, new testimony materially changed the petitioner's circumstances.

Your petitioner respectfully contends that after his appeal into the Supreme Court of Kansas, that new records and new testimony bearing upon the cause of your petitioner has been recorded and that said records, evidence and testimony was and should have been obtained for his defense. Your petitioner contends that his conviction resulted from prima facie evidence and suppressed testimony, all of which witnesses were coerced and threatened.

COERCION AND THREAT

Your petitioner respectfully contends that one Truman Reynolds was coerced and threatened by the State to testify falsely against the petitioner and that said testimony did harm to the petitioner's defense.

[fol. 9] One Lacy Cunningham who had been previously committed to a mental institution was threatened with prosecution if he did not testify for the State.

One witness for the defense was threatened before he had signed a statement, then stood on what Mr. Riley contended was his right. Mr. Riley's testimony was repressed under threat and coercion by the State of Kansas; all of which the records show. Your petitioner respectfully contends such justice under the law resulted in a travesty of justice and that he is entitled to resort to all, each and every record material in his defense, regardless to what effect the records may have on his case to prove his cause, all of which the petitioner has been denied. See: In re: Mayfield, 141 U. S. 116, and Franks v. Mangum, 237 U. S. 309; the Court said:

"This court may look to the judgment under which petitioner is detained, to ascertain whether it is absolutely void for want of jurisdiction in the court that pronounced it; and so doing, the court issuing the Writ, may look beyond forms and inquire into the very substance of the matter to the extent of deciding whether the petitioner has been deprived of his liberty without 'DUE PROCESS OF LAW,' and for this purpose may inquire into jurisdictional facts, whether they appear on the record or not."

See also: In re; Neilson, 131 U. S. 176, Ex Parte Nelson, 114 U. S. 417:

Your petitioner challenges the authority of the Supreme Court of Kansas in denying the petitioner his right to such redress, however de facto records compiled by testimony by the District Court of Stafford County, Kansas show by two separate state of facts, that Kansas has by ruthless methods, contrary to the very essence of justice, either convicted one guilty man; your petitioner, or convicted two guilty men for the same crime on two separate state of facts. The petitioner contends that the Hudson trial records proven by every question of fact that your petitioner was not guilty to any degree of the crime charged in the Information.

In Mooney v. Holohan, 294, U. S. 103; the Court said:

"It is the duty of every state to provide corrective judicial process."

[fol. 10] Your petitioner respectfully contends that in his case the State of Kansas does not provide any remedy or process, that may be brought before the Court as evidence to correct the errors of the State or its officers and agents.

Your petitioner contends that after his appeal to the Kansas Supreme Court that pertinent facts, evidence and testimony for the same offense which your petitioner was unlawfully convicted, has been introduced in a trial, in the same Court and such records has a material and significant bearing to warrant a new trial or consideration by the State of Kansas, all of which has been denied.

Right of Defense

Your petitioner contends that it is his Constitutional right to resort to any and all evidence, testimony and records which have such bearing on his conviction to secure justice and that a constitutional right prevails where such records conflict with the provisions of 'DUE PROCESS OF LAW,' irrespective of what may have proceeded, but may go back to such records for his defense which were written and recorded, after timely appeal had been executed; whereas such records are revelant and material and to which records the contents therein fully show the replication to the case of Pyle v. State of Kansas.

Your petitioner contends that the records of the District Court of Stafford County, Kansas, did convict one Merle Hudson, and Wilbur Stover, State witness who pleaded for the crime of Murder and robbery as charged in the information; wherein said records reveal that a new set of facts, new evidence adduced, and that such facts absolved any and all guilt of the petitioner of any degree of crime or connection therewith.

See: Brooks v. Missouri; 124, W. S. 394.

Circumstantial Evidence

Your petitioner respectfully contends that his convictions resulted by CIRCUMSTANTIAL EVIDENCE, suppression of witnesses and state perjured testimony, and that now since truth and pertinent facts have been established by Court of record, and that such facts and truth established by record, contrary to the *the* prima facie evidence [fols. 11-12] surrounding your petitioner should be reviewed, and your petitioner discharged in that proper re-

dress has been denied and the laws of the State of Kansas does not provide any remedies.

NOT GUILTY

Your petitioner respectfully contends that he is not guilty of any crime as charged in the information as records show that such was impossible.

Respectfully Submitted, Harry Pyle (Petitioner, per se).

[fol. 13] IN THE SUPREME COURT OF KANSAS

[Title omitted]

Petitioners Abstract

Comes now, your petitioner of the above entitled cause to the above styled Court and abstracts such errors and facts surrounding his trial and delayed facts that are material and revelant in the case at bar, a case wherein the petitioner contends that material testimony was suppressed by the State, and wherein the State of Kansas knowingly moved against your petitioner with suborn testimony, and shifting the burden of proof to your petitioner.

Your petitioner, further contends that belated evidence and facts, changed your petitioners situation; such evidence and testimony pertinant in his defense, brought before the Court of Stafford County, Kansas in the trial of Merl Hudson: A set of facts contrary to the facts set up in the trial of your petitioner and testimony collaberating his innocence. Your petitioner living with his son in the City of Hutchinson, Kansas and being unfamiliar with his son's environment or associates, being ignorant of any premeditating of any murder or robbery was arrested for murder and robbery as charged in the information. Testimony shown the positive whereabouts of the petitioner when the crime was committed over 50 miles from the place of the crime with a man who was exonerated from any connection.

The State and Court has held, presumiable, that the father is guilty of having knowledge of his son's acts or actions, also it appears, presumptiously, that the laws of the State of Kansas makes the father responsible for his son's acts. The petitioner feels the blunt of assumption

prevailed upon by circumstantial evidence, that he was the keeper of his matured son, that because he invited a guest for a turkey dinner, and because he was kept from testifying about a telegram. Does not evidence beyond a reasonable doubt support a verdict?

[fol. 14] EVIDENCE

The records show that the petitioner in the case of Pyle v. The State of Kansas was more than 50 miles distant from the scene of crime, and that it was impossible for the State to construct or connect the petitioner with any evidence or testimony surrounding the brutal slaying.

The State in its failure to prove that the petitioner participated in the crime also failed to prove that the petitioner conspired with the actual offenders. The records show that the state used every method beyond the principles of Justice, by bringing prejudicial statements by testimony before the Jury. It went further by introducing and suppressing testimony for the petitioner, Mr. Roy Riley who stood on his purported constitutional rights as a witness, and who had signed a statement prior to the time of trial, who was intimidated and coerced by the State to make this statement, who had a damage suit instituted against the officers of Stafford County, Kansas, and whose wife had been intimidated by the Stafford County, Kansas officers. The testimony of Mr. Roy Riley was material in the petitioners defense.

The Courts transcript of testimony not only shows the cruel intimidation of Mrs. Roy Riley and Mrs. Thelma Richardson but suppressed their testimony.

Mr. O. W. Lomax a member of the State Highway patrol was never subpeonaed for the trial to testify in the petitioner behalf. Testimony material in the petitioners defense. Mr. Lomax, advocated brutal torture to extract a confession from the petitioner.

The State introduced unqualified testimony of one A. C. Keith, professional witness for the State, claiming that he took chemistry in a Texas Agricultural College. Some experience in classifying blood, later, this testimony proved the Mr. A. C. Keith was a local milk tester at Topeka, Kansas and that he never qualified either as a blood analyst or a milk tester.

One Lacy Cunningham a mental patient testified under duress and intimidation by threats of connecting him with

the crime. A telegram to Lacy Cunningham, an invitation to Christmas dinner was the only connection or as near as the State placed the petitioner in the crime of murder. Yet the State failed to prove that there had been any conspiring on the part of the petitioner. Nearly every witness for the defense or petitioner was by coercion, threats and intimidation, refused to wilfully testify to the truth, but acknowledges that they were mistreated.

[fol. 15] VERDICT

A verdict of guilty was brought in after the Court changed its instruction and reversed the charges to confuse the jury after two days of deliberation, giveing further instruction to thwart a fair deliberation of which resulted in a partial threat to the Jury.

Your petitioner prevails upon the record of his trial record to disclose the very want of fairness in the trial and the very absence of evidence to connect him with the murder or robbery.

Yet the State has never proven beyond a reasonable doubt that the petitioner is guilty of any crime, but holds the petitioner, the father of one responsible offender, responsible for the acts of his matured son.

The spirit of justice universally requires that reasonable doubt be nil, and truth must prevail beyond that doubt in preponderance of facts.

Facts cease to exist when truth is established and rudimentary justice prevails upon truth beyond a reasonable doubt, and when it is, justice in its fundamental concepts has been exercised.

Altho your petitioner contends that in the States efforts to prosecute, it mattered little to whom the results involved, but a conviction, innocent or guilty, must be had to quiet the clamor of the people for a solution to the crime.

Your petitioner appealed to the Court of last resort in the State, Pyie V. Kansas —K—, a decision rendered against your petitioner. After the case had been appealed and decided about 6 months prior the trial of one Merl Hudson and upon his Court record shows he was convicted for the same crimes of robbery and murder as that of your petitioner. These records of the trial of Merl Hudson, of which your petitioner has been unable to secure or obtain, him being a pauper.

But your petitioner alleges and has cause to allege that said records set forth new evidence, new facts and new causes to be heard, which was during this trial, and is now vital to his defense, and which shows conclusively that your petitioner is not guilty of any crime or a participant thereto.

[fol. 16] WHAT RECORDS WILL SHOW

The trial records of Merl Hudson, will show that Merl Hudson, Wilber Stover (pleaded guilty) and B. A. Pyle, (testified for the State who had previously been found guilty) plotted and plan-ed the robbery and murder, and that your petitioner had no connection with the crime at any time. The records will show Mrs. Hudson, wife of Merl Hudson delivered B. A. Pyle to a place west of the Arkansas river, west of the city of Hutchinson, Kansas. The records will show that 3 men committeed the crime of robbery and murder at the Reiter farm. The State arrested several persons for the crime, eight persons were charged with the actual crime, three persons, Mrs. Hudson, B. A. Pyle and Wilber Stover, having actual knowledge of the crime, submitted testimony in and for the State and that said testimony and evidence did not collaborate with that introduced in your petitioners trial.

The records will show by actual testimony acknowledged by the state to be true, that the persons testifying for the State and helping the State to clearly establish the guilt, gave upon sworn oath, testimony that your petitioner was innocent, exonerated him of any and all knowledge of the crime of the Reiter murder or robbery.

It becomes the belief of the petitioner, records and testimony will bring about Justice, and he believes and alleges that is the duty of the State of Kansas and the Courts thereof to review these records, and return the petitioner to his lawful liberty. It is further the duty of the States Court, it be that of the United States Supreme Court, to go behind and beyond, review every pertinant fact and to what connection the records may have, and to what material testimony may reveal, then remedy the situation if it appears that there has been a travesty or miscarriage of justice. Which the State has no remedy, nor has it been interested in justice to review every record to fully determine if justice had been met.

Your petitioner contends that if the crime was committed

it was the duty of the State to prosecute to full extent of the law, but, it also is the duty of the State to make such prosecution applicable to the guilty only.

[fol. 17] Your petitioner alleges that he had exhausted his right in appeal for executive clemency, but to no avail. Therefore, the State has no further remedy for the petition other than proceedings in Habeas Corpus.

Your petitioner alleges and contends it is the duty of the Court in and for the name of Justice, to call forth the records and transcript of testimony in the case of Merl Hudson and that of your petitioner and ascertain beyond every doubt the guilt of your petitioner.

Your petitioner abstract is true in every detail to the best of his knowledge.

Respectfully submitted, Harry Pyle, Per Se.

[fol. 18] IN THE SUPREME COURT OF KANSAS

[Title omitted]

MOTION FOR APPOINTMENT OF COUNSEL

Comes now your petitioner of the above intitled cause and moves the Court to appoint counsel for petitioner's defense.

Respectfully submitted, Harry Pyle, Petitioner, Pro Se.

[fol. 19] IN THE SUPREME COURT OF KANSAS

[Title omitted]

MOTION FOR SUBPOENA DUCES TECUM

Comes now, Harry Pyle your petitioner of the above intitled cause and moves the above styled Court to let issue upon the District Court of Stafford County, Kansas, a subpeona directed to that Court that the records of testimony of Merl Hudson Case, State V. Merl Hudson, evidence and testimony which are material and all of which was not available at the trial of your petitioner which occur-ed May 16-20, 1935. The records as recorded in Merl Hudson's case

(Kansas vs. Merl Hudson) was (on or about) October 12, 1936, to be brought forth for judicial examination to review such evidence and facts which surrounded the crime of which your petitioner was charged.

And further:

Your petitioner moves the Hon. Court to let issue a subpeona upon the District Court of Stafford County, Kansas and direct that the records of trapscript of the Bert (Bud) Richardson trial be brought before the Court, that it also may be examined. Your petitioner alleges that testimony so introduced, is a material and integral part of your petitioner defense, trial date on or about June 1st 1935.

Therefore: your petitioner urges and prays that said records be brought forth for judicial examination to prove that your petitioner is innocent and has been fully exonerated of an act or participation in the crime.

Harry Pyle, Movant, Per Se.

[fol. 20] IN THE SUPREME COURT OF KANSAS

[Title omitted]

MOTION TO SUMMONS PETITIONER

Comes now Harry Pyle and moves the Court to summons your petitioner in Court for the hearing of the above intitled cause, that he may put in his defense to the above intitled action, and lawfully show to the Court his unlawful restraint by the State of Kansas and Milton F. Amrine, Warden of the Kansas State Penitentiary.

Harry Pyle, Movant, Pro. Se.

[fol. 21] IN THE SUPREME COURT OF KANSAS

[Title omitted]

MOTION TO SUBPOENA WITNESSES

Comes now, Harry Pyle, your petitioner and moves the court to summons into that court the following Witness-, Material in the defense of petitioner of the above entitled cause.

Name	Address	City	State
Mr. Roy Riley,	409-S. Boston St.,	Stafford,	Kansas
Mr. C. W. Slifer		St. John,	Kansas
Mr. Walter Bullock		Dodge City,	Kansas
Mr. Burt "Bud" Richardson		Dodge City,	Kansas
Mr. Arthur Snyder, American Ntl. Bank,		Hutchinson,	Kansas

Respectfully Submitted, Harry Pyle, Pro Se.

[fol. 22]

EXHIBIT "A"

IN SUPREME COURT OF KANSAS

STATEMENT OF ARTHUR SNYDER

I, Arthur Snyder, State that I am practicing attorney with office at 206-208 American National Bank Building, Hutchinson, Kansas.

That at the time of the Reiter Murder near Hudson, Kansas and after Harry Pyle had been placed under arrest, I was employed to go to St. John, Kansas and inform Harry Pyle that if he desired, I would act in his behalf in such preliminary matters as he saw fit for me to represent him, and that if he desired to confer with anybody that he should get in touch with me.

Within a few days time I saw in the Hutchinson paper that Harry Pyle was being held at the Kansas State Reformatory in the City of Hutchinson, and in view of my employment I felt that I should contact him at the Reformatory; that I called at the Reformatory, indentified myself and explained my mission and requested that I be permitted to see Harry Pyle; that I was then referred to a man by the name of Stone of the State Highway Police, and I spoke to him over the phone and he stated in substance that it would be impossible for me to speak with Harry Pyle at that time and he did not know when it would be possible for me to confer with Harry Pyle. After some discussion he promised me that if I would call at the Chalmers Hotel Sunday morning, which I believe was the following day after the conversation, at about 11:00, that he would then permit me to talk to Harry Pyle. That morning I called Mr. Stone and was unable to reach him, and I talked

to some person who advised me that was nothing that could be done and that I would be unable to see Mr. Pyle. As I remember it, the following day, Monday, I drew a proceedings in Habeas Corpus and the Hon. J. H. Gomers issued the order to have Mr. Pyle brought into the court, and the only person who appeared was Superintendent Noah Wiggins who stated that Mr. Pyle was not in his custody or at the Reformatory; that Mr. Pyle had been there but had been taken from there to some other point which he was unable to designate.

I then went to St. John and saw the Hon. Judge Beals and asked him to issue a writ, and he told me to contact Sheriff Welch and that he thought the writ would be unnecessary, so I then proceeded to the Sheriff's office in St. John, Kansas and saw the deputy or undersheriff and explained to him my mission. He finally told me that Sheriff Welch had gone to Kinsley (this is being intirely from memory and may be in error) and that if I would wait Mr. Pyle would be brought in, within an hour or less Mr. Pyle was brought into the Sheriff's office at St. John and there I saw him. His face and body showed bruises and I asked him what had happened and he told me he had fallen out of bed, and upon being further questioned he Told me that he [fol. 23] had been beaten at the Reformatory, or if Mr. Pyle did not tell me this, some one did, but my memory is to the effect that it was told to me by Mr. Harry Pyle.

I was continually discouraged in this case by the various officials that I had to see, and mainly the manner in which I had been treated caused me to believe that Harry Pyle was entitled to have a fight made for him.

There were some officers who where making investigations in this case who were very fair, but there were others, whose names I cannot recall, that were rather abusive in their manner and attitude toward me.

I did not Know Mr. Stone personally at the time I talked to him over the phone.

This statement is made purely from attempt to recollect the matters herein set out for memory and that the days and dates mentioned herein may be wrong, but this can be ascertained from the records as to the proceedings in the Reno County Court.

I believe then, and I believe now that Harry Pyle was and is entirely innocent of the crime for which he was con-

victed. I would be willing to appear before any board — set forth my reasons and argument why Harry Pyle is not guilty, although adjudged guilty of this crime.

(Signed) Arthur H. Snyder.

Subscribed and sworn to before me, a notary public in and for Reno County, Kansas, this 15th day of November, 1940. (Signed) Lucile Walsten, Notary Public. My Commission Expires March 22, 1944.

[fol. 24] EXHIBIT "B"

IN SUPREME COURT OF KANSAS

Law Office of Arthur H. Snyder, 206-208 American National Bank Building, Hutchinson, Kansas

November 15, 1940.

Mr. Harry Pyle, Box 2, Lansing, Kansas.

DEAR MR. PYLE:

Received your letter, and I can appear in the Federal Courts. You have done nothing to aggravate me, and enclosed you will find the Statement made by me, only at this time it will be sworn to before a notary. I would appreciate your returning the original statement sent you. Wishing you the best of success, I remain

Very truly yours, (Signed) Arthur H. Snyder.

AHS:W. Enc.
Copy of Original Letter.

[fol. 25] EXHIBIT "C"

IN SUPREME COURT OF KANSAS

"AFFIDAVIT"

STATE OF KANSAS,
County of Leavenworth, ss:

Comes now, Truman Reynolds, being of lawful age and swears on oath that he has made the following statement and that it is true so (Help me God).

I wish to correct the false statements that I made against "Harry Pyle" at his trial in St. John, Kansas in 1935, I am th-roughly convinced "Harry Pyle" was unjustly convicted and I feel that I am responsible for his conviction.

I was forced to give perjured testimony against "Harry Pyle" under threat by local authorities at St. John, Kansas and the Kansas State Police, of a penitentiary sentence for burglary if I did not testify against Mr. Pyle.

Those statements that I made against "Harry Pyle" are entirely and th-roughly false.

Mr. Pyle has never approached me at any time to commit or help to commit any unlawful act.

The affiant sayeth further not.

(Signed) Truman Reynolds, Affiant.

STATE OF KANSAS,
County of Leavenworth, ss:

I, Truman Reynolds after being sworn before a notary public state that I have made the foregoing statement of my own free will because I feel that I have done Mr. Harry Pyle a great wrong and if this statement will help him I will be greatly pleased.

(Signed) Truman Reynolds, Affiant.

Subscribed and sworn to before me this 9 day of Dec. A. D. 1940. R. D. Payne, Notary Public. My commission expires as notary public on the 18 day of April A. D. 1941.

I, Harry Pyle after being swron disposes and says that the foregoing statement is a true copy of the original.

Harry Pyle.

Subscribed and sworn to before me this 11 day of Dec. A. D. 1940. R. D. Payne, Notary Public. My commission expires Apr. 18 A. D. 1941. (Seal.)

[fol. 26] EXHIBIT "D"

IN SUPREME COURT OF KANSAS

C. W. SLIFER, ATTORNEY-AT-LAW, ST. JOHN, KANSAS

February 28, 1941

Mr. Harry Pyle, Lansing, Kansas

DEAR SIR: I have your letter dated Feb. 24, 1941 relative to your conviction of murder and Robbery in this County.

I have reviewed this case to a considerable extent to refresh my memory. One thing is now established beyond any doubt—you took no actual part in this terrible tragedy. If you took no actual part in this crime or crimes, then the only remaining way by which you could have been convicted of murder and robbery would be as an accessory before the fact, or in other words that you helped to plan this whole matter.

I never was satisfied with the evidence against you. You no doubt have been a victim of passion and prejudice. You were convicted when the feeling was at its height in this case. Every move you made during times immediately involved was twisted around to make it appear that you actually took part in planning this whole affair, and the conclusion that you actually participated in the crimes. No doubt you knew from Cunningham that Reiters had bonds or money or that it was commonly known that they did. Assuming that you did know or learn or had information of this fact, yet that would not make you guilty of anything wrong. The evidence of the State was mostly circumstantial, and the circumstances were such that no logical conclusion could be drawn from them that you planned this whole thing or helped to plan it, or that you must have participated in it.

It was the duty of the State to prove you guilty beyond a reasonable doubt. The evidence produced at the trial did not do that in my opinion, regardless of the fact that the jury found you guilty. Mistakes are made by juries as by persons. Your conviction was a grave mistake. I do not wish to be critical of the conduct of your case, but I feel that if you had taken the witness stand and explained those telegrams etc., you may have come clear. However, it may have proved otherwise had you testified. If a man is really innocent of all connections with a crime, he can usually explain his acts and conduct. This, together with other evidence he surely would have make a good defense. However, all of this is in the past. Maybe the best thing was done for you that could have been done at the trial. The thing now to be done and should be done since the conviction of Murl Hudson is to release you by any method or manner permitted by law in such cases made and provided.

It is not for me to go into details in this case; that has been done over and over again for you by your attorneys.

I — merely stating how I have felt and always have felt about your conviction. As part of the prosecution at the time, we had to go through with and make the best of the evidence at hand at the time. The evidence at the trial of Murl Hudson certainly shattered the conclusions drawn from the evidence produced at your trial. I trust that you get an early release.

Yours very truly,

(Signed) C. W. Slifer.

I, Harry Pyle, being of lawful age do swear on oath that the above letter is a true and complete copy of the original that I have in my possession, and Mr. C. W. Slifer was prosecuting Attorney at that time, of my trial and conviction.

Harry Pyle.

Subscribed and sworn to before me this 6 day of March, A. D. 1941. R. D. Payne, Notary Public. My commission expires Apr. 18, A. D. 1941.

[fol. 27] In District Court of Stafford County

The State of Kansas, Plaintiff,

vs.

Harry Pyle

Information—Filed April 23, 1935

State of Kansas,
Stafford County, ss:

I, The Undersigned, County Attorney of said County, in the name, by the authority, and on behalf of the State of Kansas, give information, that on or about the 23rd day of December Harry Pyle then and there being, did then and there unlawfully, feloniously, purposely, willfully, deliberately, premeditatedly, and with malice aforethought and in the perpetration, and in the attempt to perpetrate robbery, make a deadly ass-ulet upon one August Reiter, and kill and murder the said August Reiter, a human being,

with a dangerous weapon, towit: by shooting him, the said August Reiter, with a certain pistol commonly called a revolver, then and th-re loaded with powder and leaden bullets, h-w the said Harry Pyle, unlawfully, feloniously, purposely, willfully, deliberately, premeditatedly, and with malice aforethought, and in the perpetration, and in the attempt to perpetrate a robbery, did then and there, discharge at, against and upon the said August Reiter, the said revolver, thereby striking the said August Reiter, with said leaden bullets and giving to and inflicting in and upon the body of the said August Reiter, a certain serious and dangerous, deadly and mortal wound, of which wound the said August Reiter died.

Contrary to the form of the statute in such cases made and provided and against the peace and dignity of the State of Kansas.

COUNT TWO

I, the undersigned, county attorney of said County, in the name, by the authority, and on behalf of the State of Kansas, give information that on or about the 23rd day of December, 1934, in the County of Stafford, and State of Kansas, one Harry Pyle, then there being, did then and there unlawfully, feloniously, willfully, and intentionally take from one August Reiter, and Otto Reiter, U. S. Government Bonds of the value of $24000. more definite description cannot be given of said property, the same being the property of and belonging to the said August Reiter, and Otto Reiter; and the said Harry Pyle, did then *then* and there, willfully, feloniously, unlawfully, and intentionally take said property from the said August and the said Otto Reiter, in their presence, and against their will, and by violence to their persons, and by putting them in fear of some immediate injury to their persons, and at the point of a revolver, had and held in the hands of the said Harry Pyle; said revolver then and there being loaded with powder and leaden bullets.

Contrary to the form of the Statute in such case made and provided, and against the peace and dignity of the State of Kansas.

C. W. Slifer, County Attorney.

[fol. 28] STATE OF KANSAS,
Stafford County, ss:

I do solemnly swear, that the allegations set forth in the within information are true, to the best of my knowledge and belief. So help me God.

C. W. Slifer.

Subscribed and sworn to before me this 23rd day of April A. D. 1935. Gertrude Bartle, Clerk District Court. (Seal.)

Endorsements: "No. 7834. Information. The State of Kansas, Plaintiff, vs. Harry Pyle, Defendant. Filed April 23rd, 1935. Gertrude Bartel, Clerk of the District Court. Witnesses: Reuben W. Welch, Jay Stambaugh, Lacy Cunningham, Roy Riley, Elmer Huff, Pauline Hurd, John Schriner, Otto Reiter, Rev. J. J. Butler, Dr. Luke Butler, Clayton Richardson, Jerry Wilson, Truman Reynolds. (Information Record 3, Page 210.) H. A. Spurgeon, Adolph Ohrvall."

[fol. 29] IN THE DISTRICT COURT OF STAFFORD COUNTY, KANSAS

No. 7834

THE STATE OF KANSAS, Plaintiff,

vs.

HARRY PYLE, Defendant

JOURNAL ENTRY

Now, on this 7th day of May, 1935, being a day of the regular May 1935 term of said court, the above entitled action came duly and regularly on for hearing on the call of the docket, the state represented by the county attorney, C. W. Slifer, and by Robert Gravin, associated counsel, the defendant present in court in person together with his attorney, Don Shaffer. Thereupon, the trial was set by agreement for May 16, 1935, the same being a day of the regular May 1935 term of said court and afterwards and on May 16, 1935, defendant being present in court in person, together with his said attorney, and the state repre-

sented by the county attorney and associate counsel, Robert Gravin, William Davison, D. H. Donnelly and Arthur R. Gates, the state was given leace to endorse names of witnesses on the Information. Thereupon, arraignment was waived and a plea of not guilty entered, after both sides had announced themselves ready for trial, and thereupon a jury of twelve good and lawful men was duly empanelled and sworn to try the case, and the court empanelled two extra jurors under the provisions of the statute in such case made and provided, and thereupon the court at the request of the defendant did exclude the witnesses from the court room, and the witnesses were sworn by the clerk of this court, and the jury was sworn by the clerk, and thereupon Robert Gravin, associate counsel stated the case for the state, and the bailiff was sworn, and the witnesses were sworn, and the state introduced its evidence, and thereupon the court took a recess until May 17, 1935, and afterwards and on May 17, 1935, being a day of the regular May 1935 term of this court, further evidence was introduced, the defendant at all times being present in court with his said attorney and the state represented by the county attorney and associate counsel, and thereupon the court took a recess until May 18, 1935, the defendant being present in court together with his said attorney, and the state represented by the county attorney and associate counsel, and the state rested its case at 11:00 a. m. on May 18, 1935, and thereupon the defendant by his attorney stated hsi case and offered his evidence and rested, and both sides rested at 2:00 p. m., and thereupon the court duly instructed the jury in writing as to the law of the case no instructions being requested by either side, and the case was argued by both sides and afterwards and on May 18, 1935, at the conclusion of the argument and at 7:15 p. m. the jury did, retire in charge of a sworn bailiff to consider of their verdict, and afterwards on May 20, 1935, at 11:00 a. m. instruction No. 49 was given to the jury and afterwards on May 20, 1935, at 9:30 p. m. of said day, the jury did return into court with their verdict in writing as to each count in person, finding the defendant guilty of murder in the first degree and also guilty of robbery in the first degree, and the verdict under the first count of the Information being as follows, to wit:

IN THE DISTRICT COURT, TWENTIETH JUDICIAL DISTRICT

"THE STATE OF KANSAS,
Stafford County, ss:

THE STATE OF KANSAS, Plaintiff,

vs.

HARRY PYLE, Defendant

VERDICT ON FIRST COUNT

We, the jury Empanelled and Sworn in the above entitled case do upon our oaths find the defendant guilty of murder in the first degree as charged in the first count of the Information.

E. E. Gard, Foreman."

And the verdict of the jury under the second count of the Information being in words and figures as follows, to wit:

[fol. 30] IN THE DISTRICT COURT, TWENTIETH JUDICIAL DISTRICT

"THE STATE OF KANSAS,
Stafford County, ss:

THE STATE OF KANSAS, Plaintiff,

vs.

HARRY PYLE, Defendant

VERDICT ON SECOND COUNT

We, the jury Empanelled and Sworn in the above entitled Case do upon our oaths find the defendant guilty of robbery as charged in the second count of the Information.

E. E. Gard, Foreman."

and the verdict of the jury was received in open court and ordered filed, and neither side desiring the jury polled the jury was discharged from further consideration of this case, and the defendant was remanded to the sheriff.

Now, on this 13th day of June, 1935, being a day of the regular May 1935, term of said court, the above entitled

action again came on to be heard on the mothion for a new trial filed by said defendant, the state represented by the county attorney, C. W. Slifer, and Robert Gravin, D. H. Donnelly, Arthur R. Gates, and William Davison, associated counsel, and the defendant, Harry Pyle, present in court, together with his attorney, Don Shaffer. Thereupon, the motion for new trial was taken up, argued by both sides, and the court having heard the argument and having heard the testimony and being fully advised in the premises, denies said motion for a new trial and does approve the verdict of the jury; and thereupon, the court having overruled the motion for a new trial and having approve- the verdict of the jury, the court did ask the defendant to stand and receive the judgment and sentence of the court, and the defendant so standing was informed of the verdict of the jury and asked whether he had any legal cause to show why the judgment and sentence of the court should not be pronounced against him, and the defendant giving no reason the court gave judgment and sentence as follows, to wit:

SENTENCE

It is the judgment and sentence of the court, that the defendant under his conviction of the crime of murder in the first degree, as charged in the first count of the Information, be taken from this Court room by the sheriff of Stafford county, Kansas, to the jail of Stafford county, Kansas, and from thence be transported to the Kansas State Penitentiary, located at Lansing, in Leavenworth county, Kansas, and delivered to the Warden, and the defendant, under his conviction of murder in the first degree, be punished by confinement and hard labor in the penitentiary of the state of Kansas for life.

It is the further order, judgment and sentence of the court that the defendant, under his conviction of robbery in the first degree, as charged in the second count of the Information, be taken from this court room by the sheriff of Stafford county, Kansas, to the jail of Stafford County, Kansas, and from thence be transported to the Kansas State Penitentiary located at Lansing, In Leavenworth county, Kansas and delivered to the Warden, and that the defendant serve a term in the Kansas State Penitentiary at hard labor under the indeterminate sentence law for

the crime of robbery in the first degree for a period of not less than ten years nor more than twenty-one years and until discharged according to law.

[fol. 31] Thereupon, the defendant made application to the court for a stay bond, under the provisions of R. S. 62-1710, and the court did order that execution of the judgment and sentence be stayed after the service of a lawful notice of appeal and upon the appellant giving bond in the sum of twenty-five thousand ($25,000.) dollars, said bond to be approved by the trial court or the judge thereof, as provided by statute, said bond being conditioned that the defendant shall prosecute his appeal without unnecessary delay and abide the mandat-, order and judgment of the supreme court made in said action or any lawful order made by the district court, and will surrender himself to the sheriff if ordered to do so.

Ray H. Beals, Judge of the District Court of Stafford County, Kansas.

Attest: Gertrude Bartle, Clerk of the District Court of Stafford County, Kansas.

Filed in my office June 13, 1935. Gertrude Bartle, Clerk of the District Court, Stafford County, Kansas. Journal 21, Page 45.

[fol. 32] In District Court of Stafford County

The State of Kansas, Plaintiff,

vs.

Harry Pyle, Defendant

C. W. Slifer, Robert Gravin, Attorneys for Plaintiff.
Arthur H. Snyder, Don Shaffer, Attorneys for Defendant.

Judge's Trial Docket

Action for Murder—robbery.
Filing Date Feb. 13, 1935.

Date.	Action of Judge.
May 16.	Leave given State to endorse names of witnesses on information. Arraignment waived plea of

not guilty entered—Challenges S o D O.
Court empanels 14 jurors—court at request of deft. excludes witnesses.
Witnesses sworn by Clerk. Jury sworn by Clerk.
Case stated by Att. for State. Bailiff sworn. Witnesses sworn—evidence introduced.

1935.

May 17. Further evidence introduced—All parties present.
Further evidence introduced—All parties present. State rests at 11 A. M. Defendant offers evidence. Both sides rest at 2:00 P. M. Court instructs the jury—No instructions being requested by either side. Case argued—Co. Aty. Slifer opens argument at 2:35 P. M. to 3:15 P. M. Don Shaffer starts argument at 3:17 P. M. concluded at 5:10 P. M. Robt. Garvin commences at 5:15 P. M. Garvin concluded argument at 6 P. M.

May 18. 11 A. M. Instruction No. 49 given the jury.

May 20. 5 P. M. Jury called into court. 9:30 P. M. Jury return verdict of guilty of murder in 1st degree also guilty of robbery.

1935.

June 13. Motion for new trial. Argued. Denied. Sentenced to Kansas State Penitentiary for life for murder in 1st degree an/ for not less than ten (10) years nor more than 21 years for crime Robbery 1st degree. Staty Bond $25,000.

1936.

June 5. Mandat- Supreme Court ordered spread of record. Judgment and sentence of District Court affirmed by Supreme Court.

[fol. 33] IN THE DISTRICT COURT OF STAFFORD COUNTY, KANSAS

Record of Trial

Case No. 7834

JURY DOCKET

THE STATE OF KANSAS

vs.

HARRY PYLE

Trial by Jury. Case reached for trial May 16th, 1935

Jurors' Names:

1. Paul Barstow.
2. F. O. Stone.
3. Joe Dale.
4. Everett Bowden.
5. E. E. Gard.
6. P. O. Smith.
7. J. L. Cooper.
8. Ralph Newell.
9. Daniel Meschberger.
10. J. E. Nelson.
11. P. H. McCarty.
12. Harry Graebner.

Extra Jurors qualified: Ray Neill and Arthur Beck.

Witnesses for Plaintiff, 5/16, 1935: John Schriner, Mr. C. W. Slifer read testimony — Otto Reiter, John Swader read the testimony of Otto Reiter; Reuben W. Welch, Walter Mellies, Mildred Flair, August Willinger. May 17, 1935: Lacy Cunningham, M. H. Williams, Bobbie Wilson, Mrs. Wm. H. Wilson, Wm. H. Wilson, Mrs. David Redinger, David Redinger, Kenneth Sherman, Mrs. Kenneth Sherman, Dell Gossett, A. P. Keeling, A. C. Keith, Elmer Huff, Mrs. Harry Hibbs, Truman Reynolds, A. P. Leeling, recalled; T. G. Shushy, H. A. Spurgeon, Roy Riley, Jerome Wilson, Jay Stambaugh.

May 18, 1935: John Robinson, Dell Gossett, re-called; Jerome Wilson, Recalled; Dell Gossett, recalled; Ruben W. Welch, recalled; Jay Stambaugh.

Witnesses for Defendant: Sam Kaplan, Reuben W. Welch, Elmer Huff, Mrs. Elmer Huff, Elmer Huff, recalled; Roy E. Hohnson, Tony Welsch, Lucy J. Steele, C. W. Slifer, Mrs. B. P. Richardson, Mrs. Roy Riley, Lucy J. Steele, recalled.

In the District Court, Twentieth Judicial District

THE STATE OF KANSAS, Plaintiff,

vs.

HARRY PYLE, Defendant

Verdict

THE STATE OF KANSAS,
Stafford County, ss:

We, the jury empanelled and sworn in the abouve entitled Case do upon our oaths find the defendant guilty of murder in the first degree as charged in the first count of the Information.

E. E. Gard, For-man.

Filed May 20, 1935.

In the District Court, 20th Judicial District

THE STATE OF KANSAS, Plaintiff,

vs.

HARRY PYLE, Defendant

Verdict

THE STATE OF KANSAS,
Stafford County, ss:

We, the Jury impaneled and sworn in the above entitled case, do upon our oaths find the defendant guilty of robbery as Charged in the second count of the Information.

E. E. Gard, Foreman.

Filed May 20, 1935.

[fol. 34] The State of Kansas,
Twentieth Judicial District,
Stafford County, ss:

I, Gertrude Bartle, Clerk of the District Court of the Twentieth Judicial District of the State of Kansas, sitting within and for the County aforesaid, do hereby certify the above and foreg-ing to be a true, full and complete copy of Information; Journal Entry: Page from Judge's Trial Docket; and Page 18 of Jury Docket; in case No. 7834, entitled: The State of Kansas, Plaintiff, vs. Harry Pyle, Defendant. In the therein entitled cause as the same remain on file and of record in my office.

Witness my hand and *sela* of said court, affiexed at my office in St. John, Kansas, this 29th day of October, 1940.

(Signed) Gertrude Bartle, Clerk of the District Court, of Stafford County, Kansas. (Seal.)

[fol. 35] In the Supreme Court of the State of Kansas

No. 35,496

In Re: Harry Pyle, Petitioner,

v.

M. F. Amrine, Warden of the Kansas State Penitentiary, Respondent

Order Denying Petition for Habeas Corpus—December 11, 1941

Now comes the petitioner, Harry Pyle, and presents a verified petition for the issuance of a writ of habeas corpus herein and thereupon, it is ordered by the court, that said petition be filed and docketed without costs, and thereupon, after due consideration by the court, it is ordered that said petition for writ of habeas corpus be denied and that this proceeding be dismissed at the cost of the petitioner, taxed at $——, and hereof let execution issue.

[fol. 36] In the Supreme Court of Kansas

[Title omitted]

Motion to Hear—Filed December 15, 1941

Comes now, Harry Pyle, your petitioner and moves the Court to hear the above intitled cause that pertinant issues

be fully decided as shown in the premise of entitled cause. That the said cause was dismissed without a lawful hearing on the premise on the 11th of Dec., 1941, after being considered, denied and dismissed, setting forth no lawful reason or decision for the dismissal.

Therefore: your movant hereby moves the said court to hear the said intitled cause that the petitioner may be relieved of his unlawful restraint and restored to his liberty.

Harry Pyle, Movant.

[fol. 37] In the Supreme Court of the State of Kansas

[Title omitted]

Order Denying Petition for Rehearing—February 4, 1942

Now comes on for decision the motion of the petitioner for a rehearing of this cause and thereupon, after due consideration by the court, it is ordered that said motion be denied.

[fol. 38] In the Supreme Court of Kansas

[Title omitted]

Motion to Stay Judgment—Filed February 9, 1942

Comes now, the petitioner of the above entitled cause and moves the above styled court to stay the Judgment of the above mentioned cause, in that the petitioner of the above mentioned cause is proceeding to the United States Supreme Court by Writ of Certiorari for review of errors by the Kansas Supreme Court.

Respectfully submitted, Harry Pyle, Petitioner, Pro Se.

[fol. 39] IN THE SUPREME COURT OF THE STATE OF KANSAS

[Title omitted]

ORDER DENYING STAY OF EXECUTION—March 13, 1942

Now comes on for decision the motion of the petitioner for an order staying the execution of the judgment of this court herein and thereupon, after due consideration by the court, it is ordered that said motion be denied.

[fol. 40] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 41] SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER ALLOWING CERTIORARI—Filed April 27, 1942

The petition herein for a writ of certiorari to the Supreme Court of the State of Kansas is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

FILE COPY

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 50

HARRY PYLE,

Petitioner,

vs.

STATE OF KANSAS AND MILTON F. AMRINE, WARDEN, KANSAS STATE PENITENTIARY,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF KANSAS.

BRIEF FOR PETITIONER.

JOSEPH P. TUMULTY, JR.,
Counsel for Petitioner.

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SUPREME COURT OF THE UNITED STATES

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No. 50

HARRY PYLE,

Petitioner,

vs.

STATE OF KANSAS AND MILTON F. AMRINE, WARDEN, KANSAS STATE PENITENTIARY,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF KANSAS.

BRIEF FOR PETITIONER.

Opinions Below.

The Supreme Court of Kansas dismissed petitioner's original application for writ of *habeas corpus* without delivering an opinion, and also denied without opinion his petition for rehearing.

Jurisdiction.

The case is here on writ of certiorari granted by this Court to review a judgment of the Supreme Court of Kan-

sas dismissing petitioner's original application for writ of *habeas corpus* (R. 29). The order dismissing the application was entered on December 11, 1941. On December 15, 1941, petitioner filed a petition for rehearing (R. 29), which was denied on February 4, 1942 (R. 30). The petition for writ of certiorari was filed March 20, 1942 (R. cover), and was granted April 27, 1942. The jurisdiction of this court rests upon Section 237 (b) of the Judicial Code, as amended (U. S. C. Tit. 28, Sec. 344 (b)).

Petitioner contends that the judgment under review was final and necessarily decided adversely to petitioner a substantial federal question which was properly presented by the record. Also that the petition for certiorari was filed in this Court within the time authorized by law. These questions are discussed hereinafter in the portion of this Brief devoted to argument.

Constitutional Provisions and Statutes Involved.

The relevant parts of the federal and Kansas constitutions and statutes and of the rules of the Supreme Court of Kansas, which are deemed to have an important bearing, are set forth in the Appendix.

Statement of the Case.

In 1935, an information was filed in the District Court of Stafford County, Kansas, charging petitioner with the crimes of murder and robbery (R. 19). He pleaded not guilty, was tried by a jury and convicted (R. 22-23). A motion for a new trial filed on his behalf was overruled and he was sentenced to imprisonment in the State penitentiary for life under his conviction of murder, and for a term of not less than 10 years nor more than 21 years under his conviction of robbery (R. 24-25). On appeal the judgment was affirmed by the Supreme Court of Kansas (R. 10), *State* v.

Pyle, 143 Kansas, 772, 57 Pacific (2d) 93, (decided May 9, 1936).[1]

On November 20, 1941,[2] petitioner acting in his own behalf filed an original application for writ of *habeas corpus* in the Supreme Court of Kansas. With the application were submitted: (1) a brief (R. 4-8); (2) an abstract (R. 8-12); (3) exhibits consisting of: (a) an affidavit of one Arthur Snyder, an attorney (R. 14-16); (b) a copy of an affidavit of one Truman Reynolds, verified by petitioner to be a true copy of the original (R. 16-17) and (c) a copy of a letter from one C. W. Slifer, an attorney, to petitioner, to which was appended a sworn statement by petitioner to the effect that said copy was a true copy of the original in his possession and that said C. W. Slifer was prosecuting attorney at the time of petitioner's trial and conviction (R. 17-19); and (4) an exhibit consisting of a certified copy of the Information, page from the Judge's Trial Docket, and page from the Jury Docket in the criminal case in the District Court of Stafford County in which petitioner was convicted of murder and robbery and sentenced (R. 19-29).

In connection with his application for writ of *habeas corpus*, petitioner also filed in the court below an affidavit for leave to proceed *in forma pauperis* (R. 3-4), and motions for the appointment of counsel to represent him (R. 12), for the issuance of a subpoena *duces tecum* to bring before the court the records in the trials in the District Court of Stafford County of one Merl Hudson and one Bert (Bud) Richardson (R. 12-13), for the production of the petitioner

[1] From the opinion it appears the jury was out from seven-fifteen p. m., May 18, 1935, to nine-thirty p.m., May 20, 1935. After the jury had deliberated for two days without reaching a verdict they were recalled by the trial court and given an instruction relative to reaching a verdict which the court below disapproved but held not reversible error because of failure by petitioner's attorney to make timely objection.

[2] The date of filing the original petition for writ of *habeas corpus* does not appear in the printed transcript of record but appears in the record on file in this Court in an abstract submitted by petitioner with his brief supporting his petition for writ of certiorari.

in court for the hearing on the application for the writ (R. 13), and for the issuance of subpoenas to bring before the court certain named witnesses "material in the defense of petitioner" (R. 13). Petitioner also filed an "affidavit for waiver", in compliance with a rule of the Supreme Court of Kansas, setting forth reasons for proceeding in the State Supreme Court instead of an inferior court of concurrent jurisdiction (R. 3).

The application, though somewhat ineptly phrased, clearly charged that petitioner's imprisonment was the result of a deprivation of rights guaranteed him by the Federal Constitution. His application sets out in substance the allegations among others, that his conviction was obtained by the presentation of testimony known to the State authorities to be perjured (R. 1-2), and also, taken together with the brief and abstract filed therewith, that these authorities deliberately, by threats and intimidation, suppressed testimony which would have been favorable to his defense (R. 2, 4-5, 5-6, 9, 9-10). Among the specific allegations are:

That one Truman Reynolds was coerced and threatened by the State to testify falsely against petitioner and that said testimony did harm to petitioner's defense (R. 5); that one Lacy Cunningham was threatened with prosecution if he did not testify for the State (R. 6); that testimony of one Roy Riley favorable to petitioner's defense was suppressed under threats and coercion by the State (R. 6, 9); and that Mrs. Roy Riley and one Mrs. Thelma Richardson, witnesses for the defense, were intimidated and their testimony suppressed (R. 9).

Also submitted was a verified copy of an affidavit of said Truman Reynolds dated December 9, 1940, containing the statement (R. 17):

> "I was forced to give perjured testimony against 'Harry Pyle' under threat by local authorities at St.

John, Kansas, and the Kansas State Police, of a penitentiary sentence for burglary if I did not testify against Mr. Pyle.

"Those statements that I made, against 'Harry Pyle' are entirely and thoroughly false.

"Mr. Pyle has never approached me at any time to commit or help to commit any unlawful act."

Petitioner also alleged that testimony inconsistent with evidence presented by the State at petitioner's trial, was presented by the State at the trial of one Merl Hudson (R. 11), which trial took place about 6 months after the affirmance of petitioner's conviction by the court below (R. 10), and asked that the records of this trial, and also of the trial of one Bert (Bud) Richardson, be subpoenaed (R. 12-13).

He further alleged (R. 2) that "he has resorted to every remedy available under Kansas law, to bring such records within such remedies of the State and that redress has been denied as timely appeal had expired when such records and evidence was recorded," and that "he is now being deprived or (sic) redress to show that his imprisonment was procured by want of due process of law."

The court below, on December 11, 1941, ordered the petition to be filed and docketed without costs, but declined to issue the writ (R. 29). A motion for reconsideration, on the ground that the writ was denied without a lawful hearing and without setting forth any lawful reason for the dismissal, was filed by petitioner on December 15, 1941 (R. 29-30). On February 4, 1942, the court below entered an order (R. 30) stating that "after due consideration by the court, it is ordered that said motion (for a rehearing) be denied."

Questions Presented.

1. Whether this Court has jurisdiction to review the judgment entered by the court below.

2. Whether petitioner's application for writ of *habeas corpus* alleged facts which if proven entitled him to release

from prison because he was held pursuant to a court judgment rendered in violation of rights guaranteed him by the Due Process clause of the Fourteenth Amendment of the Federal Constitution.

3. Whether the court below erred in refusing to afford petitioner an opportunity to prove the issues of fact controlling the constitutional validity of his detention.

ARGUMENT.

I.

The Jurisdiction of This Court.

A. The Judgment Sought to Be Reviewed is Final in Character.

The order entered by the court below on December 11, 1941, denied the application for the writ and dismissed the cause. It therefore disposed of all questions presented by the record. It is settled beyond debate that a judgment of the highest court of a state dismissing a petition for writ of *habeas corpus* is final in character. See *Holmes* v. *Jennison*, 14 Pet. 540, 563; *Bryant* v. *Zimmerman*, 278 U. S. 63, 70.

B. A Substantial Federal Question was Properly Presented in the Court Below.

The application for the writ bears evidence of having been prepared by a poorly educated person. Nonetheless, the application, brief and abstract, clearly presented the question whether the judgment under which petitioner is imprisoned was void because obtained without due process of law, contrary to the Fourteenth Amendment to the Federal Constitution. The application, while asserting that defendant had been denied due process of law guaranteed under the Constitution of the United States (R. 1), does not

refer specifically to the Fourteenth Amendment. But in his brief petitioner distinctly declares that his claim is grounded on the due process of law clause of the Fourteenth Amendment (R. 4). Under the Kansas law, the court below was authorized to consider the application and the supporting papers submitted with it. *Lee* v. *Prather*, 146 Kan. 513, 71 P. (2nd) 868. If, as here, the record as a whole shows, either expressly or by clear intendment, that the claim and ground therefor were brought to the attention of the state court with fair precision and in due time, the claim is to be regarded as having been adequately presented. *Bryant* v. *Zimmerman*, 278 U. S. 63, 67.

The contention that petitioner was deprived of his liberty in contravention of the requirement of due process is clearly one not lacking in substance. In *Mooney* v. *Holohan*, 294 U. S. 103, this Court said at page 67:

> "That requirement (i.e., of due process), in safeguarding the liberty of the citizen against deprivation through the action of the State, embodies the fundamental conceptions of justice which lie at the base of our civil and political institutions."

In Kansas, *habeas corpus* is recognized as affording a remedy for a person held in prison in violation of a right guaranteed by the Federal Constitution, *Cochran* v. *Kansas*, 316 U. S. 255, citing *In re Jarvis*, 66 Kan. 329. The writ is Kansas' "response to the requirements of *Mooney* v. *Holohan*, 299 U. S. 103, for the judicial correction of a wrong committed in the administration of criminal justice and resulting in the deprivation of life or liberty without due process." Per Frankfurter, J., in *Hysler* v. *Florida*, 315 U. S. 411.

It is submitted, therefore, that petitioner's application properly presented for consideration by the court below a substantial federal question, namely, whether petitioner's

incarceration is in violation of the Fourteenth Amendment of the Federal Constitution.

C. The Judgment Below Did Not Rest upon an Adequate Non-Federal Ground.

Petitioner's application for writ of *habeas corpus* was grounded *solely* on the Fourteenth Amendment to the Constitution of the United States. It contained no mention of any constitutional provision or statute of the state. Under the Kansas law, the court below was bound to issue the writ for sufficient cause shown. (Kan. Gen. Stat. (Corrick, 1935) Sec. 60-2203-04.) Whether or not sufficient cause was shown to state a cause of action under the due process clause of the Fourteenth Amendment is itself a federal question. *Smith* v. *O'Grady*, 312 U. S. 329; cf. *Cochran* v. *Kansas*, 316 U. S. 255.[3]

The court below, by its order of December 11, 1941 (R. 29) allowed the application for the writ to be filed and docketed, but denied the writ and dismissed the proceeding. The necessary effect of the order was to deny petitioner's claim, and that is enough. See *Bryant* v. *Zimmerman*, 278 U. S. 63, 67.

Since the record discloses that there was no non-federal question presented to the court below upon which its decision might have been based, it is submitted that no other conclusion is warranted except that the federal question presented was necessarily decided by that court.

D. The Petition for Writ of Certiorari was Filed in this Court Within the Time Authorized by Law.

The order denying petitioner's application for writ of *habeas corpus* was entered on December 11, 1941, which was

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[3] "It is therefore our duty to examine petitioner's allegations in order to determine whether they show that his imprisonment is the result of a deprivation of rights guaranteed him by the Federal Constitution." Black, J., in *Smith* v. *O'Grady*, 312 U. S. 329 at 332.

in the July term, 1941, of the court below. The petition for writ of certiorari was filed in this court on March 20, 1942, and therefore more than three months after the entry of the order. However, on December 15, 1941, at the July term, 1941 and within the time allowed by the rules of the court below[4] petitioner filed therein a petition for reconsideration, which was entertained and not disposed of until February 4, 1942. Under these circumstances, it is settled that the three months' limitation begins to run from the last-mentioned date. *Citizens Bank* v. *Opperman*, 249 U. S. 448; *Gypsy Oil Co.* v. *Escoe*, 275 U. S. 492; *U. S.* v. *Seminole Nation*, 299 U. S. 417; *Labor Board* v. *Mackay Co.*, 304 U. S. 333, 343.

II.

The Merits of the Case.

A. Petitioner's Application for Writ of Habeas Corpus Alleged Facts Which if Proven Entitled Him to Release from Prison Because he Was Held Pursuant to a Court Judgment Rendered in Violation of Rights Guaranteed Him by the Due Process Clause of the 14th Amendment of the Federal Constitution.

The federal question presented was based upon the contention in petitioner's application that his imprisonment was illegal under the Federal Constitution. In denying the writ the Kansas court necessarily held that petitioner's allegations—even if proven in their entirety—would not entitle him to *habeas corpus*. *Smith* v. *O'Grady*, 312 U. S. 329, 331. Cf. *Frank* v. *Mangum*, 237 U. S. 309, 332.

It therefore becomes the duty of this Court to examine petitioner's allegations to determine whether they show that his imprisonment is the result of a deprivation of rights guaranteed him by the Federal Constitution.

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[4] See Rule No. 16, quoted in the Appendix, at Page 17.

Supporting his general allegation that he had been denied due process of law (R. 1-2), petitioner in his application alleged that the verdict rendered against him was procured by evidence and testimony introduced by the State knowing same to be perjured (R. 2). Substantially similar allegations, variously worded, together with allegations that the State suppressed evidence favorable to petitioner by threats and coercion, were contained in his accompanying brief and abstract (R. 4, 4-5, 10). He also alleged that the State knowingly introduced evidence against him contrary to evidence introduced by the State in the trial of other persons charged with the same offense for which he was convicted (R. 1, 5, 8, 10-11).

Specifically, petitioner named one witness, Truman Reynolds, who he alleged testified falsely (R. 5) and in an accompanying affidavit set forth an alleged confession of perjury committed under inducements made by State authorities signed and sworn to by Reynolds in December, 1940 (R. 16-17). He named another witness, one Lacy Cunningham, whose testimony for the State he alleged was coerced under threat of prosecution (R. 6, 9). A third witness, Roy Riley, allegedly a material witness for the defense (R. 9), was alleged to have been prevented from testifying for the defense by threats and coercion (R. 6, 9). Suppression of testimony of Mrs. Roy Riley and Mrs. Thelma Richardson was also specifically alleged (R. 9).

If these things happened, they undermine and invalidate the judgment upon which petitioner's imprisonment rests. It is well settled that if, by fraud, collusion, trickery or subornation of perjury on the part of those representing the state, the trial of an accused person results in his conviction he has been denied due process of law. *Mooney* v. *Holohan*, 294 U. S. 103. As stated by this Court in *Hysler* v. *Florida*, 315 U. S. 411 at 413, the "guides for decision are clear. If a state, whether by the active conduct or the con-

nivance of the prosecution, obtains a conviction through the use of perjured testimony, it violates civilized standards for the trial of guilt or innocence and thereby deprives an accused of liberty without due process of law."

The application having been dismissed without the issuance of a writ or filing of a return, without preliminary hearing or a finding of facts by the court of first instance, these allegations stand uncontroverted.

The application thus presented to the court below the questions of fact whether petitioner's conviction had been obtained through the use of testimony known to the State to be perjured and by the suppression of favorable testimony by threats and coercion by the State.

Since the court denied the application and dismissed the cause without assigning any reasons for its action, it is not clear whether it decided the questions of fact against petitioner. If so, its decision cannot stand, since petitioner could not be denied the opportunity to prove the truth of his allegations if those allegations, if true, entitled him as a matter of law to release from restraint. A summary rejection without a hearing of allegations supported by a sworn statement and not denied by anyone, would raise serious questions of compliance with the Constitutional requirement of a fair trial. *Walker* v. *Johnston*, 312 U. S. 275; *In re Rosier*, U. S. C. A. for D. C., decided September 2, 1942. Cf. *Mooney* v. *Holohan, supra; Smith* v. *O'Grady, supra.*

But it might be contended that the incorporation by petitioner in his application, as an exhibit, of the record of his trial and conviction, showing that he was represented by counsel throughout and revealing on its face no irregularity in the trial, was in itself sufficient refutation of his charge that his conviction was procured by the knowing use of perjured testimony and the suppression of favorable evidence. Cf. *Cochran* v. *Kansas, supra.* However, peti-

tioner alleged that the testimony and evidence on which his claim of denial of due process was based was not "reported" until after the expiration of the time for appeal from the judgment of conviction. It also appears that Reynolds' recantation was made in December, 1940, more than 5 years after petitioner's trial. Furthermore, petitioner alleged that the transcript of the trial of Merl Hudson bears out his charge, and he sought to have this record brought before the court below. It appears that this trial occurred several months after the affirmance of petitioner's conviction by the court below. Under these conditions the record of petitioner's trial and conviction could afford no refutation of his specific charges. *Cochran* v. *Kansas*, *supra*.

It is submitted that it is a necessary conclusion that the court below did not pass upon the credibility of petitioner's allegations, but merely decided that these allegations, however fully proved, would not make out a denial of due process. If these allegations are true, petitioner is imprisoned under a judgment invalid because obtained in violation of procedural guarantees protected against State invasion under the Fourteenth Amendment. *Mooney* v. *Holohan*, supra. It is submitted that the application stated a cause of action.

B. The Court Below Erred in Refusing to Afford Petitioner an Opportunity to Prove the Issues of Fact Controlling the Constitutional Validity of His Detention.

Since petitioner's application set forth facts which, if true, would render his imprisonment void because of constitutional defects, it is submitted that the judgment of the Court below should be reversed and remanded.

It is not clear from the record that the court below has made any determination of facts. If it has, in the absence of any contradiction of the petitioner's allegations, and

without according petitioner a hearing and opportunity to submit his proofs, a serious question arises whether the state court has not itself been guilty of denying petitioner a right guaranteed him by the due process clause of the Fourteenth Amendment—a right which he claimed in the court below when he grounded his motion for reconsideration on the failure to accord him a lawful hearing (R. 30). As stated by Stephens, J. in *In re Rosier*, decided by the Court of Appeals for the District of Columbia on September 2, 1942:

> "The right of hearing under the due process clause includes the right of each party to a cause to introduce evidence in support of his claim or defense, to hear the evidence introduced against him, to test the same by cross-examination, the right that nothing shall be treated as evidence which is not introduced as such, and the right to make argument on both law and facts."

See also, *Powell* v. *Alabama*, 287 U. S. 45, 68; *Moore* v. *Dempsey*, 261 U. S. 86, 92.

Conclusion.

The judgment of the Supreme Court of Kansas should be reversed, and the case remanded to the said court, there to be proceeded with according to law.

Respectfully submitted,

JOSEPH P. TUMULTY, JR.,
Counsel for Petitioner.

October, 1942.

APPENDIX.

1. Federal Constitution.

The Fourteenth Amendment provides in part as follows:

• • • nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

2. Constitution and Statutes of Kanass.

Writ of Habeas Corpus.

The Kansas Constitution contains the following provisions relating to the writ of habeas corpus:

Sec. 8 (Kansas Bill of Rights) Habeas corpus. The right to the writ of habeas corpus shall not be suspended, unless the public safety requires it in case of invasion or rebellion.

Article 3, Sec. 3 (Constitution of Kansas). Jurisdiction and terms. The supreme court shall have original jurisdiction in proceedings in quo warranto, mandamus, and habeas corpus; and such appellate jurisdiction as may be provided by law. It shall hold one term each year at the seat of the government and such other terms at such places as may be provided by law, and its jurisdiction shall be coextensive with the state.

L. 1909, c. 182, sec. 687, Kan. Gen. Stat. (Corrick, 1935), sec. 60-2201:

Every person restrained of his liberty under any pretense whatever may prosecute a writ of *habeas corpus* to inquire into the cause of the restraint, and shall be delivered therefrom when illegal.

L. 1909, c. 182, sec. 689, Kan. Gen. Stat. (Corrick, 1935), sec. 60-2203:

Application for the writ shall be made by petition, signed and verified either by the plaintiff or by some person in his behalf, and shall specify:

First.—By whom the person in whose behalf the writ is applied for is restrained of his liberty and the place where,

naming all the parties, if they are known, or describing them if they are not known.

Second.—The cause or pretense of the restraint, according to the best of the knowledge and belief of the applicant.

Third.—If the restraint be alleged to be illegal, in what the illegality consists.

L. 1909, c. 182, sec. 690, Kan. Gen. Stat. (Corrick, 1935), sec. 60-2204:

Writs of *habeas corpus* may be granted by any court of record in term time, or by a judge of any such court, either in term or vacation; and upon application the writ shall be granted without delay.

L. 1909, c. 182, sec. 696, Kan. Gen. Stat. (Corrick, 1935), sec. 60-2210:

The return must be signed and verified by the person making it, who shall state:

First.—The authority or cause of restraint of the party in his custody.

Second.—If the authority be in writing, he shall return a copy and produce the original on the hearing.

Third.—If he has had the party in his custody or under his restraint, and has transferred him to another, he shall state to whom, the time, place and cause of the transfer. He shall produce the party on the hearing, unless prevented by sickness or infirmity, which must be shown in the return.

L. 1909, c. 182, Sec. 697, Kan. Gen. Stat. (Corrick, 1935) sec. 60-2211:

* * * The plaintiff may except to the sufficiency of, or controvert the return or any part thereof, or allege any new matter in avoidance; the new matter shall be verified, except in case of commitment on a criminal charge; the return and pleadings may be amended without causing any delay.

L. 1909, c. 182, sec. 698, Kan. Gen. Stat. (Corrick, 1935), sec. 60-2212:

The court or judge shall thereupon proceed in a summary way to hear and determine the cause, and if no legal cause be shown for the restraint or for the continuance thereof, shall discharge the party.

L. 1909, c. 182, sec. 699, Kan. Gen. Stat. (Corrick, 1935), sec. 60-2213:

No court or judge shall inquire into the legality of any judgment or process whereby the party is in custody, or discharge him when the term of commitment has not expired, in either of the cases following:

First.—Upon process issued by any court or judge of the United States, or where such court or judge has exclusive jurisdiction.

Second.—Upon any process issued on and final judgment of a court of competent jurisdiction.

Third.—For any contempt of any court, officer or body having authority to commit; but an order of commitment as for a contempt upon proceedings to enforce the remedy of a party is not included in any of the foregoing specifications.

Fourth.—Upon a warrant or commitment issued from the district court or any other court of competent jurisdiction upon an indictment or information.

L. 1909, c. 182, sec. 702, Kan. Gen. Stat. (Corrick, 1935), sec. 60-2216:

The court or judge shall have power to require and compel the attendance of witnesses, and do all other acts necessary to determine the case.

L. 1909, c. 182, sec. 711, Kan. Gen. Stat. (Corrick, 1935), sec. 60-2225:

No deposit or security for costs shall be required of an applicant for a writ of *habeas corpus*.

3. Rule of the Supreme Court of Kansas.

Rule No. 16 of the Rules of the Supreme Court of Kansas as revised October 14, 1939 (printed in 143 Kansas Reports (1941) at page xi):

Post Decisions Motions.

Motions for Rehearing, etc. Motion for a rehearing or for a modification of the judgment, or for the reinstatement of a case that has been dismissed, may be filed within twenty days after the decision, a copy being furnished the opposing counsel. Unless by special order, no argument or brief will be allowed in support of such a motion except such as may be incorporated therein. The opposing party may at his option file a reply to the motion within five days after receiving a copy thereof.

No. 50

In the Supreme Court of the United States.

OCTOBER TERM, 1942

HARRY PYLE, *Petitioner*,

vs.

STATE OF KANSAS and MILTON F. AMRINE, Warden Kansas State Penitentiary, *Respondent*.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF KANSAS

BRIEF FOR RESPONDENT

JAY S. PARKER, Attorney General,
JAY KYLE, Special Asst. Attorney General,
BRADEN C. JOHNSTON, Asst. Attorney General,
SHELLEY GRAYBILL, Asst. Attorney General,
Attorneys for Respondent.

19-5556

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CASES CITED

STATUTE CITED

In the Supreme Court

of the United States

OCTOBER TERM, 1942

HARRY PYLE, *Petitioner,*

vs.

STATE OF KANSAS and MILTON F. AMRINE, Warden Kansas State Penitentiary, *Respondent.*

No. 50

BRIEF FOR RESPONDENT

ARGUMENT

In this cause the history of the case has been set out by counsel for the petitioner in his brief filed herein, and consequently, we deem it unnecessary to encumber the record by any reiteration thereof, and in considering such brief in its entirety, we believe that the principal controversy arises from the difference in conclusions reached under IC and that portion of the brief designated as II. In view of this and because of the similarity of the arguments to be advanced upon both propositions, we deem it advisable to combine the two.

However, before proceeding to the arguments, we

deem it advisable to go further into the facts underlying this entire cause. It is rather unfortunate that the petitioner's application for a writ of habeas corpus, filed in the Supreme Court of the State of Kansas, was prepared by himself or possibly by a cellmate, for the reason that procedure and evidence are rather indiscriminately interwoven. However, we do not wish to be understood that such should work to the disadvantage of petitioner, but we are forced to use his entire proceedings as we found them to have been filed.

Petitioner, in his application in the state court, speaks of "record" and "records," from which it is apparent that he refers to the "record" and "records" of the District Court of Stafford County, the county wherein he was convicted. In such application for a writ of habeas corpus, the petitioner herein makes various allegations as to what such "record" will show if produced in the Supreme Court of the State of Kansas.

Cited in the brief of petitioner herein is *State v. Pyle*, 143 Kan. 772, 57 P. 2d 93, which is the case in which the conviction of this petitioner was affirmed by the Supreme Court of the State of Kansas. We submit that the Supreme Court of the State of Kansas, when viewing the allegations of petitioner in his application for a

writ of habeas corpus, and when called upon to pass upon allegations as to what "records" will now show, ought not to be confined to such allegations, but would have a right to consider its own knowledge of what those records did and would actually show, and consequently from the reported case of *State v. Pyle*, supra, we now make the following statement of facts:

On the evening of December 23, 1934, two bachelor farmers lived in Stafford County, Kansas, on a farm located about a mile and a half southwest of what was called the Willinger filling station. These bachelor brothers owned and had buried near their farm home United States Government bonds of the value of $24,000.00. Living at Dodge City, Kansas, some fifty miles from the home of these bachelors, was a man named Lacy Cunningham, who was acquainted with the petitioner herein, and with a son of the petitioner, called "Babe" Pyle. Cunningham had knowledge that these bachelors owned Government bonds and claimed to be able to dispose of stolen bonds. While in his petition in this cause, the petitioner claims that he knew nothing of the actions or associates of his son, Babe Pyle, the facts as disclosed by the records, show that this petitioner and his son, Babe Pyle, lived in a garage

in the outskirts of the city of Hutchinson, Kansas; that both were acquainted with Lacy Cunningham and that some months prior to the murder and robbery of which petitioner was convicted, he had a conversation with Cunningham in which discussion was had of a large amount of bonds "that could have been got" a short time before. In this conversation mention was made of the Willinger filling station and of bachelors. Six days prior to such murder and robbery, petitioner herein sent a telegram to Cunningham, asking, "When can you come? Prospects good." Cunningham replied that he would be in Hutchinson the following morning and did in fact go to Hutchinson and spent two or three days at the Pyle place in company with petitioner and Babe Pyle, who was there a part of the time, *i. e.*, after his release from jail on a criminal charge. During that time conversations were had between these men concerning bonds and again that same filling station was mentioned, as was also the term "bachelors," as is shown by the following questions and answers:

"Q. At any time that morning was anything said abount bachelors?
A. Well, they (Harry and Babe Pyle) said something about that they lived a mile west and a mile south of the Willinger filling station.
Q. Who lived there?
A. Bachelors."

Following this conversation, petitioner herein, and Cunningham went to the west part of the state of Kansas, where petitioner remained until the evening of December 22, 1934, he having last been seen some fifty miles from the Willinger filling station, on the evening of December 23, 1934. A car containing an unknown number of men called at the home of the two bachelor brothers and committed an assault upon each of them, in which assault one of the brothers was shot and fatally wounded. The other was badly mistreated, and was subjected to inhumane and excruciating torture until he revealed the hiding place of their bonds. The murderers and robbers, after obtaining the bonds, left the place and these wounded men in such condition that one died within a day or two.

Petitioner herein was, within three or four days, arrested and charged with the crimes of murder and robbery. With him was arrested Cunningham, Babe Pyle and one Bud Richardson. Separate trials were had, with the result that this petitioner and his son were convicted. Petitioner duly appealed to the Supreme Court of the State of Kansas and his conviction was affirmed in *State v. Pyle*, supra.

With the above statement of facts, we now proceed to the question discussed by petitioner's designation IC:

For some reason not disclosed herein, the Supreme Court of the State of Kansas denied petitioner's application for a writ of habeas corpus and filed no opinion therein, and such Court likewise denied petitioner's application for a rehearing (R. 30). No opinion was filed at the time the application for rehearing was denied.

Petitioner herein, or his counsel, has set out in the appendix to his brief, the statutes of Kansas pertaining to procedure in causes of this nature. We now call the attention of this Court to the record filed herein, and particularly to the copy of the petition for a writ of habeas corpus which this petitioner actually filed in the Supreme Court of the State of Kansas, and which copy is shown on pages 1 and 2 of the record. Such petition is signed, "Harry Pyle, Petitioner in Forma Pauperis." Appended thereto, as the Court will note, is a form to be used for verification, but such form was not in fact used, and the petitioner did not file in this cause upon which writ of certiorari was granted herein, a verified petition as required by the statutes of the state of Kansas. (Corrick, 1935.) Section 60-2203 provides:

> "Application for the writ shall be made by petition, signed and verified either by the plain-

> tiff or by some person in his behalf, and shall specify: . . ." (Brief of Petitioner, p. 14.)

Consequently, since this petition is an unverified petition, we contend that it was the duty of the Supreme Court of the State of Kansas to deny such application and that therefore petitioner has not filed a proper application for a writ of habeas corpus in the state court, and there is now presented to this Court a non-Federal question.

We do not wish to encumber the record any further than necessary, and consequently shall not set out the rules of our Supreme Court requiring the filing of abstract, which must also be certified, and this was not done in the instant case, although, as before stated, we do not desire to charge the petitioner herein with too strict compliance, but do insist that the Supreme Court of the State of Kansas could not entertain an application for a writ of habeas corpus contrary to the mandate of the Legislature of the same state.

There is, in our opinion, another reason why the Supreme Court of the State of Kansas was justified in denying petitioner's application for a writ of habeas corpus filed before it. A careful examination of the allegations contained in such petition will fail to disclose that any material perjured testimony was offered against

this petitioner in his trial in the District Court. Contained in the record is a copy of an affidavit made by one Truman Reynolds, which at most is a verified opinion of the guilt or innocence of petitioner. Affiant states that he was forced to give prejured testimony against petitioner, but nowhere in such affidavit nor in the records herein, is there any showing as to what false testimony was given, nor is there any showing that the verdict of the jury might have been otherwise except for such claimed perjured testimony. Also in the affidavit is a statement by the affiant that petitioner "has never approached me at any time to commit or help to commit any unlawful act." Affiant does not say that he testified to any such fact in the trial, nor does petitioner anywhere make any claim that any such testimony was offered. The affiant might have added that Mr. Pyle never confessed to him that he committed this murder and robbery. Such an allegation would not mean that affiant did in fact testify to this fact, and yet a reader of the affidavit might infer that he did give such testimony.

Under the rules of procedure in the state of Kansas, if an appellant contends that he has newly discovered evidence which is material to his cause, and seeks a new trial because thereof, then he must set forth such newly

discovered evidence. If an appellant contends that certain evidence has been denied admission, then on his motion for a new trial, as well as in his appeal, he must set forth the suppressed evidence. It is not enough that he make bare allegation of such fact.

State v. Wellman, 102 Kan. 503, 170 Pac. 1052.

The same rule, we think, should and does apply in case of an application for a writ of habeas corpus.

Kessinger v. Amrine, 154 Kan. 207, 117 P. 2d 565.

The Reynolds affidavit is the nearest incident in which perjured testimony was used against him according to the allegations of petitioner.

In this same connection, the petitioner complains of suppressed testimony, but wholly fails to set out any testimony of any witness which he complains was suppressed in the trial and wherein he was convicted of these two offenses.

The petitioner has resorted to a unique procedure in this case. Among his exhibits as contained in the record, is a letter written by one who apparently at one time was interested in the defense of this petitioner and which interest seems to have been prior to his conviction and continues to this date. We maintain that there is no evidentiary facts set forth in such letter, which were not or could not have been known to peti-

tioner at the time of his trial and conviction. The mere inference which might be gained therefrom is an attempt to show that petitioner was denied his right to counsel. That inference cannot be maintained, for, as shown by the reported case of *State v. Pyle*, as well as is shown by the records in this Court, this petitioner was represented at all stages during his trial, conviction and appeal. (See journal entry, transcript of record, pp. 21-25, inc.) On page 26 of such record is shown a portion of the copy of the trial judge's docket, in which it is shown that counsel for petitioner spent one hour and fifty-eight minutes in his argument on the motion for a new trial. The reported case of *State v. Pyle* shows the same attorney represented petitioner in his appeal, and from that opinion written by Chief Justice Dawson, we quote as follows:

> ". . . In the instant case the alert and skillful counsel for defendant who so assiduously guarded every right of this defendant from the moment the case was called until judgment was pronounced . . ." (pp. 781, 782.)

A careful reading of the affidavit of Attorney Arthur H. Snyder, and as set out in the record furnished herein by petitioner, fails to show any evidence not known to petitioner at the time of his trial.

Also contained in the record herein is copy of a letter

written some time after the trial, by one C. W. Slifer, who was holding the office of county attorney during the time of the trial of petitioner in the District Court of Stafford County, Kansas. It is readily apparent that this letter is evidence of nothing. It is unverified and contains at most only an expression of an attorney given some six years after conviction was obtained. The journal entry of conviction herein referred to shows that Robert Garvin was associated with Mr. Slifer in the trial of this case. The most that can be said concerning the letter of Mr. Slifer is that he does not personally agree with the verdict of the jury.

Under Kansas procedure (and we think under the procedure of all other states), the prosecuting attorney need not agree with the verdict in order to give it validity. In the state of Kansas the trial judge sits as the thirteenth juror, and before a verdict of a jury can become effective and any judgment rendered thereon, that verdict must have the approval of the trial judge. In this case the trial judge who had heard all evidence, gave his approval to the verdict, and solemn judgments of court ought not be set aside some years later by a writ of habeas corpus because some office-holder has changed his mind.

At the risk of being criticized for an unduly long

argument herein, and in connection with what petitioner terms "merits of case," we cannot help being impressed by the apparent desire of the petitioner to evade a production of the true state of facts as they existed out at this farm home on the night of December 23, 1934. He complains that the state afterwards tried one Merl Hudson and convicted him of complicity in this murder and robbery. He complains that the evidence introduced in the Hudson trial is not identical to that introduced in the trial wherein he was convicted of these same offenses. This may be true. It is seldom that in separate trials of criminal cases, identical evidence will be introduced in each. It is significant that petitioner herein points out that his own son, Babe Pyle, one Wilbur Stover, a convicted murderer, and the wife of Merl Hudson testified against Merl Hudson and that on such testimony Merl Hudson was convicted of this murder and robbery. Consequently, Merl Hudson, Wilbur Stover, Babe Pyle and Mrs. Merl Hudson must have some valuable evidence as to the identity of the perpetrators of this crime.

The petitioner herein demands that the Supreme Court of the State of Kansas subpoena a number of persons to testify on his behalf and whereby he might show that his conviction was wrongful, and yet petitioner

does not call for the testimony of his own son, who, by implicating Merl Hudson and testifying thereto, must have been one of the murderers. Petitioner does not call for the testimony of any of the other four persons just herein mentioned, and who must know who killed this old bachelor. It would of course be highly improper for us to quote or attempt to quote any evidence of any of these conspirators as given in the trial of Merl Hudson, but we do have a right to our belief that this petitioner does not desire any cross examination of any of such witnesses, particularly as it might apply to his own whereabouts on the night of this murder. Instead, he asks the Supreme Court of Kansas to bring in witnesses, some of whom testified in his own case, and to bring in others, the nature of whose testimony is unknown.

CONCLUSION

In conclusion, we submit that the decision of the Supreme Court of the State of Kansas was correct for both reasons hereinbefore discussed. To decide otherwise would, in our opinion, unduly burden the courts with cases of this nature. Were the rules of procedure otherwise, then this petitioner could file in the Supreme Court of the State of Kansas, application for a writ of habeas corpus, based upon the grounds that the first witness

who testified against him gave prejured testimony. Upon denial of his first application he could file his second application for a writ, based upon the ground that the second witness who testified against him gave prejured testimony, and so on until he had exhausted the list of witnesses who testified against him. If it is unnecessary to verify his petition or petitions, then he has no fear of prosecution for perjury. If he need not set out the particular testimony which he contends was prejury, then the Court must, with patience, hear each case so presented by him. He could then use each defense witness as a basis for separate applications for writ of habeas corpus by contending that testimony from each of such witnesses was suppressed by fear and intimidation, all by the mere allegation of coercion and intimidation. He might be entitled to an appeal to this Court after each such refusals.

In our humble opinion, this is not the law, and that petitioner having failed in the two particulars above pointed out, the decision of the Supreme Court of the State of Kansas should be affirmed.

Respectfully submitted,

JAY S. PARKER, Attorney General,
JAY KYLE, Special Asst. Attorney General,
BRADEN C. JOHNSTON, Asst. Attorney General,
SHELLEY GRAYBILL, Asst. Attorney General,
Attorneys for Respondent.

19-5556

SUPREME COURT OF THE UNITED STATES.

No. 50.—October Term, 1942.

Harry Pyle, Petitioner,
vs.
State of Kansas and Milton F. Amrine, Warden, Kansas State Penitentiary.

On Writ of Certiorari to the Supreme Court of the State of Kansas.

[December 7, 1942.]

Mr. Justice Murphy delivered the opinion of the Court.

Petitioner seeks to review an order of the Supreme Court of Kansas denying his application for writ of habeas corpus. In 1935 petitioner was convicted by a jury in a Kansas state court upon an information charging him with the crimes of murder and robbery. A motion for a new trial was overruled, and he was sentenced to life imprisonment under his conviction for murder, and to a term of from 10 to 21 years for robbery. On appeal the judgment was affirmed by the Supreme Court of Kansas. *State* v. *Pyle*, 143 Kan. 772, 57 P. 2d 93.

On November 20, 1941, petitioner, a layman acting in his own behalf, filed an original application for writ of habeas corpus in the Supreme Court of Kansas. The crude allegations of this application charge that his imprisonment was the result of a deprivation of rights guaranteed him by the Constitution of the United States, in that the Kansas prosecuting authorities obtained his conviction by the presentation of testimony known to be perjured, and by the suppression of testimony favorable to him. Filed with this application were a brief and an abstract, also apparently prepared by petitioner himself, which are part of the record before us. These documents elaborate the general charges of the application, and specifically allege that "one Truman Reynolds was coerced and threatened by the State to testify falsely against the petitioner and that said testimony did harm to the petitioner's defense"; that "one Lacy Cunningham who had been previously committed to a mental institution was threatened with prosecution if he did not testify for the State"; that the testimony of one Roy Riley, material to petitioner's

defense, "was repressed under threat and coercion by the State"; that Mrs. Roy Riley and Mrs. Thelma Richardson were intimidated and their testimony suppressed; and, that the record in the trial of one Merl Hudson for complicity in the same murder and robbery for which petitioner was convicted, held about six months after petitioner's direct appeal from his conviction, reveals that the evidence there presented is inconsistent with the evidence presented at petitioner's trial, and clearly exonerates petitioner.

Certain exhibits accompanied the application; among these were copies, sworn by petitioner to be true and correct copies of the originals, of an affidavit executed by Truman Reynolds in 1940, and a letter dated February 28, 1941, from the former prosecuting attorney who represented the State at petitioner's trial. The affidavit contained a statement that affiant "was forced to give perjured testimony against Harry Pyle under threat by local authorities at St. John, Kansas and the Kansas State Police, of a penitentiary sentence for burglary if I did not testify against Mr. Pyle". The letter stated, "Your conviction was a grave mistake", and further that, "The evidence at the trial of Murl Hudson certainly shattered the conclusions drawn from the evidence produced at your trial."

In connection with his application petitioner moved for the appointment of counsel to represent him, for subpoenas duces tecum to bring up the records in the trials of Merl Hudson and one Bert (Bud) Richardson, for the subpoenaing of certain witnesses allegedly material to his case, and for his presence in court. The record does not show what disposition, if any, was made of these various motions.

No return was made to the application for the writ. On December 11, 1941, the court below entered an order "that said petition be filed and docketed without costs, and thereupon, after due consideration by the court, it is ordered that said petition for writ of habeas corpus be denied". There was no opinion. A motion to rehear was also denied without opinion. We brought the case here on certiorari, 316 U. S. 654, because of the constitutional issues involved.

Habeas corpus is a remedy available in the courts of Kansas to persons imprisoned in violation of rights guaranteed by the Constitution of the United States. *Cochran* v. *Kansas*, 316 U. S. 255, 258. Petitioner's papers are inexpertly drawn, but they

do set forth allegations that his imprisonment resulted from perjured testimony, knowingly used by the State authorities to obtain his conviction, and from the deliberate suppression by those same authorities of evidence favorable to him. These allegations sufficiently charge a deprivation of rights guaranteed by the Federal Constitution, and, if proven, would entitle petitioner to release from his present custody. *Mooney* v. *Holohan*, 294 U. S. 103. They are supported by the exhibits referred to above, and nowhere are they refuted or denied. The record of petitioner's conviction, while regular on its face, manifestly does not controvert the charges that perjured evidence was used, and that favorable evidence was suppressed with the knowledge of the Kansas authorities. No determination of the verity of these allegations appears to have been made.[1] The case is therefore remanded for further proceedings. *Cochran v. Kansas, supra; Smith* v. *O'Grady*, 312 U. S. 329; cf. *Waley* v. *Johnston*, 316 U. S. 101, 104. In view of petitioner's inexpert draftsmanship, we of course do not foreclose any procedure designed to achieve more particularity in petitioner's allegations and assertions.

Reversed and remanded.

A true copy.

Test:

Clerk, Supreme Court, U. S.

[1] In re Pyle, 153 Kan. 568, 112 P. 2d 354, is not such a determination. That was an appeal by petitioner from the dismissal of another petition for writ of habeas corpus by the Kansas district court for the Leavenworth district.